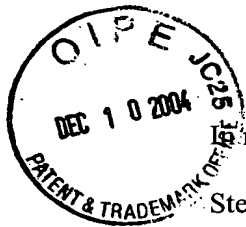


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Is re Continuation Application of:

Stephanie ANDES et al.

Confirmation No.: 3793

Serial No.: 10/811,867

Examiner: MANLOVE, Shalie

Filed: 3/30/04

Group Art Unit: 1755

Title: MULTILAYER PIGMENTS BASED ON COATED METAL PLATELETS

PETITION UNDER 37 C.F.R. §1.181

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby respectfully petition the Group 1700 Director to order the Examiner to withdraw the finality of the Office Action mailed 15 October 2004. See M.P.E.P. §1000.02(c)3.

Particularly, a Final Office Action was mailed 26 August 2003 in predecessor Application No. 10/453,479. In that Action, claims 1 - 10 and 17 were rejected (corresponding to claims 1 - 11 in the present application), with claims 1 - 5 and 10 rejected as allegedly being anticipated by U.S. Patent No. 5,624,486 and claims 1 - 10 rejected under 35 U.S.C §102(b) as allegedly being anticipated by U.S. Patent No. 5,607,504. Additionally, claim 17 stood rejected under 35 U.S.C §103(a) as allegedly being unpatentable over U.S. Patent No. 5,624,486 or U.S. Patent No. 5,607,504.

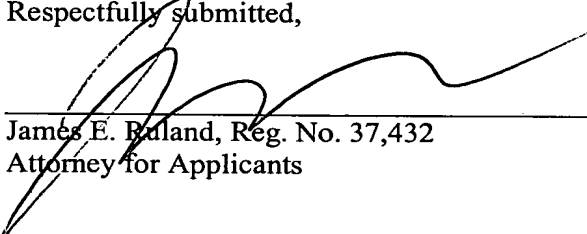
In the present application, a Final Office Action was mailed 15 October 2004. In that Office Action, claim 11 stands rejected under 35 U.S.C §102(b) as allegedly being anticipated by U.S. Patent No. 5,624,486. This ground of rejection was not present in the Office Action of the predecessor Application No. 10/453,479.

Pursuant to M.P.E.P. §706.07(b), the claims of a new application may be finally rejected if all of the claims of the new application would have been properly finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application. Under M.P.E.P. §706.07(a), the subsequent action shall not be made final if the Examiner introduces a new ground of rejection that is neither necessitated by Applicants' amendment of the claims nor based on information submitted in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. §1.97(c). Claim 11 in the present application is identical to claim 17 of U.S. Application No. 10/453,479, which was finally rejected in the Office Action of 26 August 2003. Consequently, this is a new ground of rejection not necessitated by Applicants' amendments. As such, it limits Applicants ability to respond to the rejection by, e.g., forgoing an absolute right to submission of evidence of significant and unexpected results, *inter alia*.

Consequently, Applicants respectfully submit that this Petition be granted and that the finality of the Action mailed 15 October 2004 be withdrawn.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



James E. Buland, Reg. No. 37,432
Attorney for Applicants

MILLEN, WHITE, ZELANO &
BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: MERCK-2212-C02

Date: December 10, 2004

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